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| EXAMINER |
|---|
| PARTHASARATHY, PRAMILA |

| ART UNIT | PAPER NUMBER |
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| 2136 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lhptoms@leehayes.com

PTOL-90A (Rev. 04/07)

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/729,823 | TOWNSEND ET AL. |
| | Examiner | Art Unit | |
| | Pramila Parthasarathy | 2136 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>02 January 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-32</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-32</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>6/4;1/7</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

## DETAILED ACTION

**1.**     This action is in response to the communication 0/02/2007. No preliminary

amendments to the claims were filed. Claims 1 – 32 are currently pending.

### *Information Disclosure Statement*

**2.**     An initialed and dated copy of Applicant's IDS form 1449, filed on 1/2/2007 is

attached to the Office action.

Applicant's IDS form 1449 filed on 6/9/2004 has not been considered by the

examiner, as there is no relevance pertaining to the instant application. Examiner does

not understand what does "MPEG system stream" has to do with "Security-related

programming interface" or "implementing security policies on a plurality of security

engines". It has been placed in the application file, but the information referred to therein

has not been considered.

### *Claim Objections*

**3.**     Claims 21 – 26 are objected to because of the following informalities: Claim 21

recites, "calling one or more first functions". Replace "calling one or more first functions"

with "calling one or more first **group of** functions" (**emphasis added**).

Appropriate correction is required.

### Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.      Claims 1 – 32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per Claim 1 – 13, Claims recite a programming interface embodied in one or more computer readable media. "Computer readable media" is disclosed in the instant specification as "Computer readable media can be any available media that can be accessed by a computer. By way of example, and not limitation, computer readable media may comprise "computer storage media" and "communications media."; "Computer storage media" includes volatile and non-volatile, removable and non-removable media implemented in any method or technology for storage of information such as computer readable instructions, data structures, program modules, or other data. Computer storage media includes, but is not limited to, RAM, ROM, EEPROM, flash memory or other memory technology, CD-ROM, digital versatile disks (DVD) or other optical storage, magnetic cassettes, magnetic tape, magnetic disk storage or other magnetic storage devices, or any other medium which can be used to store the desired information and which can be accessed by a computer." and "Communication media" typically embodies computer readable instructions, data structures, program modules, or other data in a **modulated data signal, such as carrier wave** or other transport mechanism." (**Emphasis added.** See paragraphs [0363 – 0365]

The office's current position is that claims involving modulated data signal, such as carrier wave do not fall within any of the categories of patentable subject matter set forth in 35 USC 101, and such claims are therefore ineligible for patent protection. See 1300 OG 142 (November 22, 2005) (in particular, see Annex IV ( c )).

Furthermore, security engines and functions are described as "Security
engines 114-118 may be implemented in **software,** hardware, or a
combination of software and hardware. Particular security
engines are security-related application programs, such as
antivirus programs and intrusion detection programs." (**Emphasis
added.** See paragraph [0023]).

Examiner interprets Claim 1 as reciting software functions. Therefore, the entire
claim recites software, which fails to fall into one of the four categories of invention and
Claims 1 – 13 are non-statutory.

As per Claims 14 – 32, merely claimed as application programs and as means
for where the means is implemented in software representing a computer listing per se,
that is descriptions or expressions such as a program that is, descriptive material per
se, non-functional descriptive material, is not statutory because it is not a physical
"thing" nor a statutory process, as there are not "acts" being performed. Such claimed
computer programs do not define any structural and functional interrelationships
between the computer program and other claimed aspects of the invention which
permits the computer program's functionality to be realized. Warmerdam, 33 F 3d at
1361, 31 USPQ2d at 1760. In re Sarkar, 588 F.2d 1330, 1333, 200 USPQ 132, 137
(CCPA 1978). See MPEP 2106(IV)(B)(1)(a).

The specification of the instant application describes that the present invention
can be implemented as software, thereby rendering the means for language as
computer software. In re Donaldson Co., 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir.
1994), decided that the "broadest reasonable interpretation" that an examiner may give

means-plus-function language is that statutorily mandated in paragraph six.

Accordingly, the PTO may not disregard the structure disclosed in the specification

corresponding to such language when rendering a patentability determination.

See MPEP 2181 also. Therefore, giving the claims their broadest reasonable

interpretation, while keeping the structure disclosed in the specification in my mind, one

of ordinary skill in the art would construe claims 14 – 32 as representing a computer

program per se.


### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ
644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a.
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply
with 37 CFR 3.73(b).

5.      Claims 1 – 32 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over amended claims 1 – 5, 8

– 17 and 19 – 32 of copending Application No. 10/729,096.  Although the conflicting

claims are not identical, they are not patentably distinct from each other because the

instant case, all elements of claims 1 – 32 correspond to the claims of 1 – 5, 8 – 17 and

19 – 32 of the copending application claims, except in the instant claims element

"communicates new data associated with an existing security policy", is referred in the

copending application claims as "communicating … a password that does not comply

with predetermined criteria". It would have been obvious to one having ordinary skill in

the art to recognize that communicating new data and associating it with an existing

security policy is equivalent to identifying and communicating that the password does

not comply with the predetermined (existing) criteria (security policy).

        This is a provisional obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.


6.      Claims 1 – 32 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1 – 53 of

copending Application No. 10/729,530.  Although the conflicting claims are not identical,

they are not patentably distinct from each other because the instant case, all elements

of claims 1 – 32 correspond to the claims of 1 – 53 of the copending application claims,

except in the instant claims element "communicates new data associated with an

existing security policy … instructs the plurality of security engines to replace an existing

security policy with the new security policy", is referred in the copending application

claims as "accessing a new security policy ...plurality of security engines processing at

least a portion of the new security policy ...and switching, after each of the plurality of

security engine is ready to begin using the new security policy, each of the plurality of

security engines to the new rules substantially concurrently". It would have been

obvious to one having ordinary skill in the art to recognize that communicating new data

and associating it with an existing security policy is equivalent to accessing a new

security policy and switching to the new rules concurrently.

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.


7.      Claims 1 – 32 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over the amended claims 1 –

60 of copending Application No. 10/456,606. Although the conflicting claims are not

identical, they are not patentably distinct from each other because the instant case, all

elements of claims 1 – 32 correspond to the amended claims of 1 – 60 of the copending

application claims, except in the instant claims element "communicates new data

associated with an existing security policy", is referred in the copending application

claims as "security service configured to monitor in real time the security-related

information from the plurality of sources, the security service receiving automatic

updates ... performing actions to protect actions to protect the system based on the

security related information". It would have been obvious to one having ordinary skill in

the art to recognize that communicating new data and associating it with an existing security policy is equivalent to identifying and updating the security settings and protecting the system based on the security-related information.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


**8.** Claims 1 – 32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended claims 8 – 22 and 34 – 37 of copending Application No. 10/456,093. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant case, all elements of claims 1 – 32 correspond to the claims of 8 – 22 and 34 – 37 of the copending application claims, except in the instant claims element "communicates new data associated with an existing security policy", is referred in the copending application claims as "installing new filter ... into the policy engine .. comparing the new filter ... and notifying ... about the new filter". It would have been obvious to one having ordinary skill in the art to recognize that communicating new data and associating it with an existing security policy is equivalent to identifying and processing new filter and further installing the new filter (taking action if the new data corresponds to the existing policy and updating the new security policy).

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**9.**      Claims 1 – 32 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over amended claims 1 – 158

of copending Application No. 10/411,876.  Although the conflicting claims are not

identical, they are not patentably distinct from each other because the instant case, all

elements of claims 1 – 32 correspond to the claims of 1 – 158 of the copending

application claims, except in the instant claims element "communicates new data

associated with an existing security policy", is referred in the copending application

claims as "a group policy management program and set of program interfaces operating

on group policy related data and communicating with a directory service that is

associated with the group policy related data to perform the requested operation". It

would have been obvious to one having ordinary skill in the art to recognize that

communicating new data and associating it with an existing security policy is equivalent

to managing and communicating group policy (security policy).

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

**10.**      Claims 1 – 32 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Claims 1 – 32 recite "first group of functions", "second group of functions", "first function", "second function". "third function", "fourth function", "fifth function" and "sixth function". However, no actual definition for these functions has been recited in the claims.

Applicant is advised to amend the claims to clearly state these functions when filing response. Examiner will broadly interpret these functions as instructions to the security engines to modify existing security policy.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**11.**   Claims 1 – 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Ko et al. (U.S. Patent Number 6,789,202).

**12.**   As per Claims 1 and 21, Ko teaches, "a first group of functions related to communicating a new security policy to a plurality of security engines, wherein each of the plurality of security engines is configured to replace an existing security policy with

the new security policy; and a second group of functions related to communicating an

indication of each security engine's readiness to implement the new security policy"

(Fig. 2, 3; Summary and Column 4 line 51 – Column 5 line 4 and Column 6 line 19 –

.Column 7 line 22).

**13.**    As per Claims 14 and 27, Ko teaches, "a first function that communicates a new

security policy to the plurality of security engines; a second function that identifies

whether each of the plurality of security engines is prepared to apply the new security

policy; and a third function that instructs each of the plurality of security engines to

implement the new security policy after determining that all of the security engines are

prepared to apply the new security policy" (Fig. 2, 3; Summary and Column 4 line 51 –

Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**14.**    As per Claim 2, Ko teaches," wherein the first group of functions includes a

method that instructs each of the plurality of security engines to delete the new security

policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**15.**    As per Claim 3, Ko teaches, "wherein the first group of functions includes a

method that initializes a particular security engine" (Column 4 line 51 – Column 5 line 4

and Column 6 line 19 – Column 7 line 22).

**16.** As per Claim 4, Ko teaches, "wherein the first group of functions includes a method that instructs each of the plurality of security engines to implement the new security policy." (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**17.** As per Claim 5, Ko teaches, "wherein the first group of functions further comprises a method that communicates new data associated with an existing security policy to at least one of the plurality of security engines" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**18.** As per Claim 6, Ko teaches, "wherein the first group of functions further comprises a method that communicates configuration information to at least one of the plurality of security engines" (Column 5 lines 5 – 25 and Column 6 line 19 – Column 7 line 22).

**19.** As per Claim 7, Ko teaches, "wherein the second group of functions includes a method that indicates whether a particular security engine has implemented the new security policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**20.**     As per Claim 8, Ko teaches, "wherein the second group of functions further

comprises a method that retrieves updated data associated with a particular security

policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).


**21.**     As per Claim 9, Ko teaches," wherein the second group of functions further

comprises a method that communicates new data identified by one of the plurality of

security engines to a security agent" (Column 4 line 51 – Column 5 line 4 and Column 6

line 19 – Column 7 line 22).


**22.**     As per Claim 10, Ko teaches, "wherein the second group of functions further

comprises a method that allows one of the plurality of security engines to query a user

of a system containing the plurality of security engines" (Column 5 line 5 – 20 and

Column 6 line 19 – Column 7 line 22).


**23.**     As per Claim 11, Ko teaches, "wherein at least one of the plurality of security

engines implements an antivirus service" (Column 6 lines 3 – 17 and Column 6 line 19 –

Column 7 line 22).


**24.**     As per Claim 12, Ko teaches, "wherein at least one of the plurality of security

engines implements a firewall application" (Column 6 line 3 – 17 and Column 6 line 19 –

Column 7 line 22).

**25.** As per Claim 13, Ko teaches, "wherein the plurality of security engines implement the new security policy after all security engines have indicated a readiness to implement the new security policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**26.** As per Claim 15, Ko teaches, "a fourth function that causes each of the plurality of security engines to delete the new security policy if at least one of the plurality of security engines is unable to apply the new security policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**27.** As per Claim 16, Ko teach, "a fourth function related to communicating event information identified by a first security engine to the other security engines" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**28.** As per Claim 17, Ko teach, "a fourth function related to communicating security-related information identified by a first security engine to an event manager" (Column 5 line 19 – 28 and Column 6 line 19 – Column 7 line 22).

**29.** As per Claim 19, Ko teaches, "wherein at least one of the plurality of security engines is associated with a first type of security attack" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**30.**     As per Claim 22, Ko teaches, "wherein the security-related information identifies a type of security attack" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**31.**     As per Claim 23, Ko teaches, "calling one or more fourth functions to facilitate communicating a revised security policy to the first security engine" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**32.**     As per Claim 24, Ko teaches, "calling one or more fourth functions to facilitate communicating configuration information to the first security engine" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**33.**     As per Claim 25, Ko teaches, "calling one or more fourth functions to facilitate instructing the first security engine and the second security engine to implement the security policy" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**34.**     As per Claim 26, Ko teaches, "calling one or more fourth functions to facilitate communicating a revised security policy to the first security engine" (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**35.** As per Claim 28, Ko teaches, "means for exposing a fourth function that communicates a new security policy to the plurality of security engines; and means for exposing a fifth function that instructs the plurality of security engines to replace an existing security policy with the new security policy (Column 4 line 51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).

**36.** As per Claim 30, Ko teaches, "wherein the security-related event is detection of a virus" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**37.** As per Claim 31, Ko teaches, "wherein the security-related event is an unauthorized attempt to access a storage device" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**38.** As per Claim 32, Ko teaches, "means for exposing a fourth function that notifies the event manager that a particular security engine has finished processing another function call" (Column 6 lines 3 – 17 and Column 6 line 19 – Column 7 line 22).

**34.** As per Claim 18, Ko teaches, "wherein the event manager communicates the security-related information to at least one of the plurality of security engines" (Column 5 line 19 – 28 and Column 6 line 19 – Column 7 line 22).

**35.**     As per Claim 20, Ko teaches, "wherein at least one of the plurality of security

engines is associated with a second type of security attack" (Column 6 lines 3 – 17 and

Column 6 line 19 – Column 7 line 22).


**36.**     As per Claim 29, Ko teaches, "means for exposing a sixth function that instructs

the plurality to security engines to delete the new security policy if at least one of the

plurality of security engines cannot implement the new security policy" (Column 4 line

51 – Column 5 line 4 and Column 6 line 19 – Column 7 line 22).


### Conclusion


Examiner's Note: Examiner has cited particular columns and line numbers in the

references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are

applied to the specific limitations within the individual claim, other passages and figures

may apply as well. It is respectfully requested from the applicant, in preparing the

responses, to fully consider the references in entirety as potentially teaching all or part

of the claimed invention, as well as the context of the passage as taught by the prior art

or disclosed by the examiner.


The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. See PTO Form 892.  ·

Applicant is urged to consider the references. However, the references should be evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. If applicants are aware of any better prior art than those are cited, they are required to bring the prior art to the attention of the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pramila Parthasarathy whose telephone number is 571-272-3866. The examiner can normally be reached on 8:00a.m. To 5:00p.m.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on 571-232-4195. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pramila Parthasarathy
May 09, 2007.